U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 16 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an assistant professor at Michigan. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and new witness letters.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on March 26, 2012. An accompanying statement from counsel addressed the three prongs of the *NYSDOT* national interest test. With respect to substantial intrinsic merit, counsel stated that the petitioner "seeks employment in the field of Market Research and Marketing Education. Continued advanced behavioral research in this area will lead to direct improvements to the U.S. economy and U.S. environment."

To meet the national scope standard, counsel asserted:

> [The petitioner's] accomplishments have set him apart from others in the field to the extent that he is a foremost expert. [The petitioner's] achievements and accomplishments have been national in scope as they have set a model as to how marketing educators and students can help small businesses throughout the United States

> to improve their successes, hire additional workers, increase wages – each of which leading to the benefit of the U.S. economy as a whole. Additionally, [the petitioner's] achievements with respect to the Eco-car have led and will continue to lead to improvements in the U.S. environment.

Finally, counsel asserted:

> [The petitioner] possesses multiple skills and talents that are unique, and in combination, are not able to be articulated on a labor certification application. Labor certification has been viewed as inapplicable to a position than [*sic*] includes a combination of occupations (see 69 Fed Reg 247 at 77394) – indeed, the record shows that [the petitioner] spends a significant amount of time in conducting research, in teaching, and in consulting – hence, labor certification is inappropriate in his case.

The cited entry in the Federal Register promulgated a final rule issuing new Department of Labor (DOL) regulations governing labor certification. The relevant regulation does not match counsel's description. Specifically, the regulation at 20 C.F.R. § 656.17(h)(3), which appears on the cited page of the Federal Register, reads:

> If the job opportunity involves a combination of occupations, the employer must document that it has normally employed persons for that combination of occupations, and/or workers customarily perform the combination of occupations in the area of intended employment, and/or the combination job opportunity is based on a business necessity. Combination occupations can be documented by position descriptions and relevant payroll records, and/or letters from other employers stating their workers normally perform the combination of occupations in the area of intended employment, and/or documentation that the combination occupation arises from a business necessity.

The quoted regulation does not state, as counsel claimed, that "[l]abor certification has been viewed as inapplicable to a position tha[t] includes a combination of occupations." Rather, combination occupations are acceptable, provided the employer is able to document business necessity.

Furthermore, USCIS records show that the petitioner's employer filed a Form I-140 petition on behalf of the present beneficiary on March 4, 2013. The petition, which sought the same classification as the one sought in the present proceeding, included an approved labor certification that the Department of Labor had accepted for processing on October 26, 2012. Therefore, the petitioner in this proceeding is the beneficiary of an approved petition, in the same immigrant classification that he seeks here. The petitioner's Form I-485 adjustment application is currently pending at the Nebraska Service Center. Now that the DOL has acted on the application for labor certification, there is no longer room for speculation about how the DOL might hypothetically act on such an application.

Counsel asserted that the petitioner "is near the end of his six year stay on H1B. Labor certification processing often takes a year or more – if labor certification were required, [the petitioner] would need to depart the USA and await adjudication." Counsel provided no evidence to support this claim. The petitioner's labor certification was approved in less than five months. More generally, to grant the

waiver based on the impending expiration of nonimmigrant status would move the focus from the petitioner's individual merits to the timing of filing. To give such timing significant weight would provide an incentive for the filing of non-meritorious waiver applications in the final months of a given alien's nonimmigrant status.

Counsel stated:

> [The petitioner] has multiple unique and innovative skills in the field of Marketing, with distinctive expertise in: (a) inter-firm relationships in knowledge industries dealing with green products, innovation, and technology; and (b) application of judgment and choice theory in marketing research. His unique and innovative skills in the above areas have resulted in [the petitioner] obtaining both a national and international reputation for excellence.

Counsel also asserted:

> [The petitioner] has made many outstanding accomplishments in the field of Marketing. . . . His achievements include: multiple original publications of high significance, leading awards, presentation of papers at conferences, serving as a reviewer for prestigious journals, and serving as a key individual in the development of unique marketing protocols for small businesses throughout the United States.

Publications, presentations, peer review and participation in marketing do not inherently establish eligibility for the waiver. The petitioner must establish the significance of his accomplishments. The petitioner must also support the claim that he has earned an "international reputation for excellence." The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted copies of several journal articles and conference papers (some later collected in published proceedings), but no objective evidence (such as citation database printouts) to establish the influence of those materials. Publication or presentation alone does not establish their significance, impact or influence.

The petitioner also documented his activity as a peer reviewer for journal articles and conference papers. The record does not show what standards one must meet to review papers in this way, or how he came to be selected as a peer reviewer (for example, whether publishers specifically sought him out or whether he answered an open call soliciting such reviewers). Therefore, the petitioner has not established the significance that should attach to his peer review activities.

The petitioner's initial submission included several witness letters. Discussion of representative examples follows. The petitioner submitted a letter dated March 1, 2012, signed by Professor [redacted] where the petitioner earned his master of marketing research (MMR) degree. The letter reads, in part:

> [The petitioner's] success in academia can be measured by his publications. . . .
>
> In particular, [the petitioner's] academic performance resulted in four Best Paper awards from important nationally and internationally recognized conferences involving the Society for Marketing Advances and the Association of Collegiate Marketing Educators. . . .
>
> In addition, the progression of the high quality of his work can be traced in [the petitioner's] published articles. In 2006, his paper (titled " published in This journal is ranked 13th according to Academic [sic] of Marketing Science's special report. In 2009, his paper (titled " was published in sheds a light to his academic excellence because this journal is recognized as a top-tier journal in the consumer behavior area. As stated earlier, the rigorous review and acceptance period for top journals can take up to three years.

Exactly the same passages, including the same grammatical anomalies, appear in a March 2, 2012 letter attributed to Dr. assistant professor at New York (who previously studied alongside the petitioner at . Dr. 's letter includes the last-quoted sentence above, even though his letter contained no previous assertion that the peer review process can take up to three years. Only Prof. 's letter contained a prior discussion of the issue.

This use of identical language or virtually the same language when describing the beneficiary's achievements and abilities suggests the language in the letters is not the authors' own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). At the very least, the similarities are consistent with the conclusion that whoever wrote Dr. 's letter copied parts of Prof. 's letter.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

Between 1999, when he completed his MMR degree, and 2003 when he began studying at the the petitioner worked as a project director at One of the petitioner's clients, president of South Korea, listed "consulting works that [the petitioner] provided to [the] company":

- Market trend analysis (global marketing research project covering 5 countries)

- Conjoint analysis (1 publication with me and best paper at Association of Collegiate Marketing Educators)
- New product development (US and China customers' buying behavior comparisons)
- B2B marketing analysis Korean company measuring supplier relationship satisfaction)
- Pricing model (international marketing research project covering 12 countries)

asserted that the petitioner "is most certainly a leader in his field" and "one of the top few in his field," but did not explain how the above information supports that conclusion.

Dr. associate professor at chaired the petitioner's doctoral dissertation project. Dr. stated that the petitioner's "research has been extremely well received by the academic community," having "won . . . best paper awards" at various professional conferences. Dr. also stated:

> [The petitioner's] outstanding academic credentials and industry experience place him as one of the top marketing researcher scientists in this field. He has already made original and significant contributions in the field and will continue breaking new grounds and opening up new frontiers in the field of marketing and marketing education in U.S. . . .
>
> In particular, his recent publications with me are believed to provide contributions to the U.S marketing research industry where greatly [*sic*] use conjoint analysis and multiple regression analysis to solve business and marketing problems. In addition, his on-going research interest focuses on the importance of supplier-manufacturer relationship where the U.S. manufacturers often rely on strong partnership or commitment from oversee [*sic*] suppliers. His research is certainly important for the sustainable U.S[.] economy growth.

Professor associate dean of stated that the petitioner's "desirable expertise in marketing enables him to continue to make significant contributions not only to the marketing field but also in the area of business generally." The use of the verb "continue" indicates prior "significant contributions," but Prof. did not identify those contributions. Regarding the petitioner's research work, Prof. stated that the petitioner "has demonstrated good progress in building a respectable research record," and "has a bright future in the field of marketing and marketing research with his contributions likely to have positive impacts nationally and internationally."

Dr. dean of asserted that was one of "[o]nly 16 Schools . . . in North America" selected to participate in the "an international collegiate vehicle engineering competition" sponsored by the among other public and private entities. Dr. described the petitioner's connection to the project:

> As Dean, I supported [the petitioner's] project titled ' project . . . to educate consumers who are not environmentally-concerned about the importance of eco-friendly vehicles.
>
> With a group of students, [the petitioner] provided an integrated variety of communication efforts including an website, social media and networking (green garage blog), media relationships, and education (including a K-12 special training session and a summer youth program). His students successfully presented the marketing strategy for the in a national competition, sponsored by the
>
> As a result, [the petitioner] has used his expertise in marketing to improve both the U.S. environment and our education by completing the project.

Counsel also asserted that the petitioner's "achievements with respect to the have led and will continue to lead to improvements in the U.S. environment." Neither counsel nor Dr. specified the nature or extent of the claimed past improvements. The record does not show what effect 's involvement in the had on the environment, and the petitioner was not involved in the design of the vehicle, only with promotional efforts. The record does not show that design has gone into commercial production and, thanks to the petitioner's promotional work, is selling in significant numbers across the country, or that the petitioner's promotional activities have led to significant changes in the public's consumption of non-renewable resources. It is not sufficient merely to assert the overall goals of the and then contend that, by virtue of his involvement, the petitioner has had some unspecified impact on the environment.

executive director of the in Michigan, stated:

> [The petitioner] approached me to discuss how he could involve his marketing research students to assist in improving the economic climate in the Houghton area, specifically by helping small local businesses to increase their revenues by conducting a marketing survey. He suggested a Market Leakage survey to determine how much retail business local businesses were losing to bigger out-of-town retailers. He and his students successfully completed the project and presented the results to a meeting, attended by its members, members of the Chamber of Commerce, and the press. His project has clearly provided benefits to the business community members, as well as given a model for other academic educators in the different business schools in the country as to how they can involve themselves in the community. . . .
>
> [The petitioner's] project with is a model that can be replicated by other marketing professors, nation-wide.

Mr. did not state that other marketing professors have, in fact, adopted the petitioner's model, and the record does not show that the project described above has improved the local economy. Mr. stated only that the petitioner and his students presented recommendations to local businesses – not that the businesses followed the recommendations, or that they resulted in significant improvements.

Furthermore, the petitioner's survey compared "local businesses" to businesses in Michigan and Wisconsin, the implication being that local consumers shopped in those cities. The petitioner did not explain why it is in the national interest for consumers in the Keweenaw area to patronize local businesses instead of competitors in or online (an outcome that would help the Keweenaw businesses at the expense of the others). Activity that benefits one local part of the United States at the expense of other areas does not serve the national interest. *See NYSDOT*, 22 I&N Dec. 217.

Many witnesses claimed that the petitioner is a nationally or internationally recognized figure in his field, but almost all of the witnesses have demonstrable close ties to the petitioner through either his studies or his employment. The two exceptions are Professor president of the , and Dr. director of the MBA Program at the and president of the Both witnesses stated that the petitioner won Best Paper Awards at their respective organizations' conferences. Dr. stated: "Since [the petitioner] garnered a Best Paper Award, it stands to reason that he was recognized for excellence by his peers nationally and internationally." Prof. asserted that the petitioner's two prize-winning "papers are indicative of [the petitioner's] research excellence in the fields of marketing research and marketing education."

The USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) states that "evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations" can form part of a claim of exceptional ability. Exceptional ability, in turn, does not guarantee the waiver, because the statute clearly subjects aliens of exceptional ability to the job offer requirement. Therefore, the petitioner's best paper awards do not necessarily imply eligibility for the waiver. The petitioner submitted no evidence to show that the petitioner's particular awards are especially significant and therefore merit special consideration.

The director issued a request for evidence on August 28, 2012 instructing the petitioner to "establish . . . a past record of specific prior achievement that justifies projections of future benefit to the national interest." The director requested evidence to show that other researchers have cited the petitioner's published work, thereby demonstrating the extent of his influence on the field.

In response, counsel stated that the petitioner "has conducted multiple unique research and practical studies in the field, which have directly resulted in tremendous improvements to both the U.S. economy and U.S. environment." In addition to copies of previously submitted letters, the petitioner submitted two new witness letters. mayor of stated that the petitioner "develop[ed] a written survey of residents as part of the community involvement portion of the master plan." asserted that the petitioner "created a unique professional survey that was far greater than one [the city] could have developed through other local sources." The record does not

show that this survey had any particular significance outside of or that survey development lay outside the abilities of other qualified marketing professionals.

Dr. associate professor at the stated:

> [The petitioner's] recent publication in innovative marketing journal entitled ' ' is influential and importantly, significant in marketing research and business areas. For example, unfortunately, since 1990, conjoint analysis, known as a new product development tool has not been meaningfully improved, which results in the strong need for publishing new papers and approaches in this area. Given this backdrop, his recent 2011 paper identified the sources of problems and importantly offered the solutions for the future growth. His approach certainly impact [*sic*] on other scholars in marketing and business areas.

In an effort to provide objective support for the assertion that the petitioner's research has had greater impact in his field, the petitioner submitted a printout from the Google Scholar database, showing that his published work attracted two citations in 2010, five in 2011 and four in 2012. The printout indicates that the petitioner has one article with nine citations (one of which is a self-citation), and two others with one citation each, for a total of ten independent citations. The petitioner submitted copies of some of the citing articles. The petitioner did not show that this rate of citation demonstrates a particularly high level of impact or influence in his field.

The petitioner submitted additional information regarding his involvement in the The evidence indicated that the petitioner helped to procure $15,000 in "funding to support an MBA student." Other evidence shows that the petitioner secured $9,877 in internal grant funding from for a project called ' ' The record does not show that obtaining grant funding in these amounts is unusual in the petitioner's academic field, or that the petitioner's activities resulted in "tremendous improvements to . . . the . . . U.S. environment" as counsel claimed.

The evidence submitted shows an active and productive career, but the petitioner did not establish that his past work has distinguished him from his peers to an extent that would warrant approval of the national interest waiver.

The director denied the petition on November 29, 2012. The director acknowledged that the petitioner had met the intrinsic merit and national scope prongs of the *NYSDOT* national interest test, but found that the petitioner had not demonstrated a past history of influential achievement.

On appeal, counsel contends that the director disregarded the petitioner's "extraordinary and exceptional credentials." Counsel asserts that the petitioner's "unique abilities are demonstrated, firstly, by the leadership roles he has assumed." The only such role that counsel identifies is the petitioner's assistant professorship at Counsel does not explain how this untenured (albeit tenure-track) position, which ranks below the tenured positions of associate professor and full professor, qualifies as a "leadership role."

The director, in denying the petition, had stated that publication appears to be the norm in the petitioner's field. Counsel maintains that, while "it is normal to attempt to publish one's paper . . . [b]eing published is not the norm, but rather a privilege. Only the most distinguished manuscripts are accepted for publishing." To support this point, counsel points to two new letters, as well as quotes a passage from Dr. 's earlier letter (including language apparently copied from Prof. letter).

Professor , the petitioner's predecessor at stated: "In general, a journal publication in the field [of] marketing takes about three years to be published." He did not specify the proportion of submitted papers that are eventually accepted for publication; lengthy processing time does not imply a low probability of acceptance.

Professor United Kingdom, founding editor of the stated: "I can attest that the acceptance rate for manuscripts is very low due to its high ranking and prestige in the field of consumer behavior. Therefore, it is highly commendable that" the journal accepted one of the petitioner's papers in 2009. Prof. asserted that the petitioner "is an outstanding professor with extraordinary insight in marketing and consumer behavioral research" who "has made several key contributions to the field of consumer behavioral research and marketing," but the preponderance of evidence in the record does not show that others in the field share this opinion. Prof. for instance, indicates that the petitioner's career is in its earliest stages, and he refers to that career in terms of future promise, stating, for instance: "I anticipate that he will have a significant impact on the academy as well as on business and government research and planning as he continues to develop as a researcher and teacher."

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The witness letters submitted with this petition do not consistently identify specific, verifiable contributions that the petitioner has made to his field that would warrant approval of the national interest waiver.

Beyond the witness letters, counsel observes that the petitioner has received "awards and invitations to present at conferences of prestige" and "has been asked to review the work of others in the field lending to his credibility as an expert in the field." As stated previously, the record does not contain sufficient information about the petitioner's awards and invitations to allow the conclusion that these events are significant recognitions of expertise. Even if the petitioner had established exceptional ability in his field, defined as a level of expertise significantly above that ordinarily encountered in his field, the job offer requirement would still apply. Here, the petitioner has submitted witness letters and artifacts from his career such as papers and grant documentation, and counsel has claimed that these materials establish the petitioner's superior standing in his field, but the record does not support those claims.

An illustrative example is counsel's claim, repeated on appeal, that the petitioner has played an "instrumental role in marketing green technology and . . . acting as a proponent of energy efficient projects." The petitioner's only documented work in this area has concerned some efforts promoting s involvement in the which does not justify counsel's broad conclusion that the petitioner "is an instrumental figure in promoting and advertising the green energy movement."

The petitioner's work has been mostly local. Counsel claims that this local work in "can be replicated nation-wide." The record does not show that it has been so replicated, or that other jurisdictions have taken any steps or shown any interest in doing so. Without such evidence, the observation that the petitioner's work "can be replicated nation-wide" amounts to speculation.

Counsel repeats the assertion that "labor certification is not appropriate for a job, which includes a combination of occupations." By the time counsel wrote this passage in January 2013, DOL was already processing an application for labor certification on the petitioner's behalf. As already noted, DOL approved that application. Counsel's speculation is counter to documented facts, and therefore has no weight in this proceeding.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

The dismissal of this appeal is without prejudice to any further proceedings arising from the approved petition, with labor certification, filed on the petitioner's behalf.

ORDER: The appeal is dismissed.